

Aaron L. Hammer, Esq. (*admitted pro hac vice*)  
Thomas R. Fawkes, Esq. (*admitted pro hac vice*)  
FREEBORN & PETERS LLP  
311 South Wacker Drive, Suite 3000  
Chicago, Illinois 60606-6677  
Telephone: 312.360.6000  
Facsimile: 312.360.6995  
ahammer@freebornpeters.com  
tfawkes@freebornpeters.com

*Attorneys for Trico Products Corporation*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	Chapter 11
GENERAL MOTORS CORP, et al.,	Case No.: 09-50026
Debtors.	( <i>Jointly Administered</i> )

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**NOTICE OF FILING**

To: See Attached Certificate of Service

PLEASE TAKE NOTICE that on June 15, 2009, we caused to be filed with the Clerk of the United States Bankruptcy Court for the Southern District of New York at the Dirksen Federal Building, One Bowling Green, New York, New York, 10004-1408, the **Objection of Trico Products Corporation to Notice of (I) Debtors' Intent To Assume and Assign Certain Executory Contracts, Unexpired Leases of Personal Property, and Unexpired Leases of Nonresidential Real Property and (II) Cure Costs Related Thereto**, a copy of which is attached hereto and hereby served upon you.

Dated: June 15, 2009

**TRICO PRODUCTS CORPORATION**

By: /s/ Thomas R. Fawkes  
One of Its Attorneys

Thomas R. Fawkes (IL Bar No. 6277451)  
FREEBORN & PETERS LLP  
311 South Wacker Drive, Suite 3000  
Chicago, Illinois 60606  
Telephone: (312) 360-6000  
Facsimile: (312) 360-6573

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on Monday, June 15, 2009, I served this *Objection of Trico Products Corporation to Notice of (I) Debtors' Intent To Assume and Assign Certain Executory Contracts, Unexpired Leases of Personal Property, and Unexpired Leases of Nonresidential Real Property and (II) Cure Costs Related Thereto* to those parties receiving electronic notice in the above-captioned case through the Court's ECF/CM system and upon the individuals listed on the following Service List by first-class United States mail, postage prepaid.

/s/ Thomas R. Fawkes

**Service List**

Electronic Mail Notice List

The following is the list of parties who are currently on the list to receive e-mail notice/service for this case.

Philip D. Anker philip.anker@wilmerhale.com  
Joel D. Applebaum japplebaum@clarkhill.com  
Karin F. Avery avery@silvermanmorris.com  
Marc M. Bakst mbakst@bodmanllp.com  
David J. Baldwin dbaldwin@potteranderson.com, bankruptcy@potteranderson.com  
Elizabeth Banda kwilliams@pbfcm.com  
William M. Barron wbarron@sgrlaw.com  
Robert L. Barrows rbarrows@wdblaw.com  
Robert N. Bassel ecfbassel@gmail.com  
Christopher Robert Belmonte cbelmonte@ssbb.com, pbosswick@ssbb.com  
Howard S. Beltzer hbeltzer@morganlewis.com  
Frederick A. Berg fberg@kotzsangster.com  
Wanda Borges borgeslawfirm@aol.com  
Jean Winborne Boyles jboyles@jhvgmlaw.com, KCOLE@JHVGMLAW.COM  
Lynn M. Brimer lbrimer@stroblpc.com, sfraser@stroblpc.com  
James L. Bromley maofiling@cgsh.com  
William J. Brown wbrown@phillipslytle.com  
Theresa V. Brown-Edwards bankruptcy@potteranderson.com  
Mark Edwin Browning bk-mbrowning@oag.state.tx.us, sherri.simpson@oag.state.tx.us  
Andrew P. Brozman andrew.brozman@cliffordchance.com,  
sarah.campbell@cliffordchance.com  
Adam D. Bruski adbruski@lambertleser.com  
James Christopher Caldwell ccaldwell@starkreagan.com  
John F. Carberry jcarberry@cl-law.com, dsantos@cl-law.com  
James C. Carignan carignan@pepperlaw.com  
James S. Carr KDWBankruptcyDepartment@kelleydrye.com  
George B. Cauthen george.cauthen@nelsonmullins.com,  
mary.wilkinson@nelsonmullins.com;brook.wright@nelsonmullins.com  
Babette A. Ceccotti bceccotti@cwsny.com, ecf@cwsny.com  
Teresa H. Chan kkansa@sidley.com;emcdonnell@sidley.com  
J Eric Charlton echarlton@hiscockbarclay.com  
Gloria M. Chon gloria.chon@kkue.com

Jennifer Anne Christian jchristian@kelleydrye.com,  
KDWBankruptcyDepartment@kelleydrye.com  
Marvin E. Clements agbanknewyork@ag.tn.gov  
Tiffany Strelow Cobb tscobb@vorys.com, cdfricke@vorys.com  
Dennis J. Connolly dconnolly@alston.com  
Susan M. Cook smcook@lambertleser.com  
Dawn R. Copley dcopley@dickinsonwright.com, dnavin@dickinsonwright.com  
Trent P. Cornell tcornell@stahlcowen.com  
David N. Crapo dcrapo@gibbonslaw.com  
Michael G. Cruse mcruse@wnj.com, hziegler@wnj.com  
Thomas H. Curran tcurran@haslaw.com, calirm@haslaw.com  
Teresa K.D. Currier tcurrier@saul.com, mflores@saul.com  
Vincent D'Agostino vdagostino@lowenstein.com  
Peter D'Apice dapice@sbep-law.com  
Renee M. Dailey renee.dailey@bgllp.com, megan.olsen@bgllp.com  
Colin Thomas Darke cdarke@bodmanllp.com  
James E. DeLine jed@krwlaw.com, pal@krwlaw.com  
Gabriel Del Virginia, Esq. gabriel.delvirginia@verizon.net  
Sam Della Fera sdellafera@trenklawfirm.com  
Benjamin P. Deutsch bdeutsch@schnader.com  
Frank W. DiCasteri fdicasteri@foley.com  
Gerard DiConza gdiconza@dlawpc.com, las@dlawpc.com  
Mary Joanne Dowd dowd.mary@arentfox.com, rothleder.jeffrey@arentfox.com  
Kathryn E. Driscoll kdriscoll@pmppc.com  
Michael James Edelman mjedelman@vedderprice.com, ecfnydocket@vedderprice.com  
Martin Eisenberg me@martineisenberglaw.com  
Judith Elkin judith.elkin@haynesboone.com  
Alyssa Englund aenglund@orrick.com  
Richard L. Epling richard.epling@pillsburylaw.com, gianni.dimos@pillsburylaw.com  
Belkys Escobar belkys.escobar@loudoun.gov  
Amy Evans aevans@crosslaw.com  
Kerry M Ewald kewald@dickinsonwright.com  
Robert Michael Farquhar mfarquhar@winstead.com, whsu@winstead.com  
Thomas R. Fawkes tfawkes@freebornpeters.com  
Carol A. Felicetta cfelicetta@reidandreige.com  
Alyson M. Fiedler afiedler@schiffhardin.com  
Robert J. Figa rfiga@comlawone.com  
Deborah L. Fish dfish@allardfishpc.com  
Elizabeth K. Flaagan eflaagan@faegre.com  
Daniel J. Flanigan dflanigan@polsinelli.com, tbackus@polsinelli.com  
Kenneth A. Flaska gm@dmms.com  
Jonathan L. Flaxer jflaxer@golenbock.com,  
ssmith@golenbock.com; avassallo@golenbock.com; eneuman@golenbock.com; mlu@golenbock.  
com  
Shawn Randall Fox sfox@mcguirewoods.com  
Mark S. Frankel mfrankel@couzens.com  
Scott J. Freedman sfreedman@dilworthlaw.com  
Mark J. Friedman mark.friedman@dlapiper.com  
Victoria D. Garry vgarry@ag.state.oh.us  
Wendy J. Gibson wgibson@bakerlaw.com  
Jeanette M. Gilbert jgilbert@motleyrice.com

Steven A. Ginther sdnyecf@dor.mo.gov  
Andrew C. Gold agold@herrick.com  
Brett D. Goodman brett.goodman@troutmansanders.com,  
harriet.cohen@troutmansanders.com  
Robert D. Gordon rgordon@clarkhill.com  
Neil Andrew Goteiner ngoteiner@fbm.com, calendar@fbm.com; karentsen@fbm.com  
Brian M. Graham bgraham@salawus.com, bmgrahampack@sbcglobal.net  
Christopher F. Graham cgraham@mckennalong.com,  
jvargas@mckennalong.com; rgee@mckennalong.com; jmayes@mckennalong.com; ehall@mcken  
nalong.com  
William T. Green uncbill@msn.com  
John T. Gregg jgregg@btlaw.com  
Stephen M. Gross sgross@mcdonaldhopkins.com  
Stephen B. Grow sgrow@wnj.com, kfrantz@wnj.com  
Paul R. Hage phage@jaffelaw.com  
Richard F. Hahn rfhahn@debevoise.com; jchung@debevoise.com; mao-ecf@debevoise.com  
Paula A. Hall hall@bwst-law.com, marbury@bwst-law.com  
Alan D. Halperin ahalperin@halperinlaw.net,  
cmitchell@halperinlaw.net; cbattaglia@halperinlaw.net; spark@halperinlaw.net  
Michael C. Hammer mchammer3@dickinsonwright.com  
Adam Craig Harris adam.harris@srz.com  
Ryan D. Heilman rheilman@schaferandweiner.com  
Suzanne Hepner shepner@lrpbpc.com,  
ecarder@lrpbpc.com; jcahn@lrpbpc.com; rbarbur@lrpbpc.com; scameron@lrpbpc.com; psherer@lrpbpc.  
com  
Mark D. Hofstee markh@bolhouselaw.com  
Michael S. Holmes , mshatty@yahoo.com  
Jonathan Hook jonathan.hook@haynesboone.com,  
lenard.parkins@haynesboone.com; paul.fabsik@haynesboone.com  
P. Warren Hunt pwh@krwlaw.com  
John J. Hunter jrhunter@hunterschank.com, sharonaldrich@hunterschank.com  
Donald J. Hutchinson hutchinson@millercanfield.com  
Elihu Inselbuch eb@capdale.com  
Adam H. Isenberg aisenberg@saul.com  
Peter F. Jazayeri pjazayeri@ecjlaw.com  
Nan E. Joesten njoesten@fbm.com  
John J. Jolley jay.jolley@kutakrock.com  
Gregory O. Kaden gkaden@goulstonstorrs.com  
Stephen Karotkin  
theodore.tsekerides@weil.com; Shai. Waisman@weil.com; Rachel.albanese@weil.com; michele.m  
eises@weil.com; ilusion.rodriguez@weil.com; nathan.pierce@weil.com; lacey.laken@weil.com  
Karel S. Karpe karpek@whiteandwilliams.com, yoderj@whiteandwilliams.com  
Andrew C. Kassner andrew.kassner@dbf.com  
Susan R. Katzoff skatzoff@hiscockbarclay.com, lmcrobbie@hiscockbarclay.com  
Thomas M. Kennedy tkennedy@kjmlabor.com  
Richardo I. Kilpatrick ecf@kaalaw.com, lrobertson@kaalaw.com  
Jennifer B. Kimble jkimble@burr.com, mstinson@burr.com; mivey@burr.com  
Kathleen H. Klaus khk@maddinhauser.com  
Jeff Klusmeier jeff.klusmeier@ago.mo.gov  
Thomas F. Koegel tkoegel@flk.com

Deborah Kovsky-Apap kovskyd@pepperlaw.com,  
kressk@pepperlaw.com, wisotska@pepperlaw.com, alexsym@pepperlaw.com  
Debra A. Kowich dkowich@umich.edu, schmitzr@umich.edu  
Robert R. Kracht rrk@mccarthylebit.com  
Stuart A. Krause skrause@zeklaw.com  
J. Alex Kress akress@riker.com  
Patrick J. Kukla pkukla@carsonfischer.com  
Darryl S. Laddin bkrfilings@agg.com  
Stuart A. Laven slaven@bfca.com  
David S. Lefere davidl@bolhouselaw.com  
Michael S. Leib msl@maddinhauser.com, bac@maddinhauser.com  
David A. Lerner dlerner@plunkettcooney.com  
Larry A. Levick levick@singerlevick.com,  
croote@singerlevick.com; ckirkland@singerlevick.com  
David T. Lin dlin@seyburn.com  
Thomas K. Lindahl tlindahl@mcdonaldhopkins.com  
Edward J. LoBello elobello@msek.com  
Eric Lopez Schnabel schnabel.eric@dorsey.com  
Cynthia Jordan Lowery cynthialowery@mvalaw.com  
Kayalyn A. Marafioti kmarafio@skadden.com  
Michael A. Maricco maricco.michael@pbgc.gov, efile@pbgc.gov  
Richard W. Martinez Richardnotice@rwmaplc.com, Clairenotice@rwmaplc.com  
Jil Mazer-Marino jmazermarino@msek.com, kgiddens@msek.com  
Frank McGinn ffm@bostonbusinesslaw.com  
Barbara S Mehlsack bmehlsack@gkllaw.com  
Brian H. Meldrum bmeldrum@stites.com  
Marc B. Merklin mmerklin@brouse.com  
Angela Z. Miller amiller@phillipslytle.com, jhahn@phillipslytle.com  
Harvey R. Miller harvey.miller@weil.com, garrett.fail@weil.com  
Joseph Thomas Moldovan bankruptcy@morrisoncohen.com,  
moldovanlb@morrisoncohen.com  
James P. Moloy jmoloy@dannpekar.com  
Timothy D. Moratzka tdm@mcmlaw.com  
Max Anderson Moseley mam@jbpp.com, mkd@jbpp.com  
Eric T. Moser eric.moser@klgates.com, kristen.serrao@klgates.com  
Jill L. Murch jmurch@foley.com, lapeterson@foley.com; khall@foley.com  
Jennifer L. Nassiri jennifer.nassiri@dlapiper.com  
Michael A. Nedelman mnedelman@nglegal.com,  
mwatler@nglegal.com; egloetzner@nglegal.com  
Michael E. Norton mnorton@nortonlawassociates.com  
Gordon Z. Novod , dcho@kramerlevin.com  
Sean A. O'Neal soneal@cgsh.com,  
maofiling@cgsh.com; jcroft@cgsh.com; skleinman@cgsh.com; ashajnfeld@cgsh.com; crodriguez  
@cgsh.com; sarobinson@cgsh.com  
Norman D. Orr norman.orr@kkue.com  
Mark Russell Owens mowens@btlaw.com, mowens@btlaw.com; bankruptcyindy@btlaw.com  
Ingrid S. Palermo ipalermo@hselaw.com  
Paul J. Pascuzzi ppascuzzi@ffwplaw.com  
Robert W. Phillips rphillips@simmonscooper.com  
James A. Plemmons jplemmons2@dickinsonwright.com  
Susan Power-Johnston sjohnston@cov.com, jmcneil@cov.com

Ronald S. Pretekin pretekin@coollaw.com, piatt@coollaw.com  
Jessica E. Price jprice@brouse.com  
Dennis Jay Raterink raterinkd@michigan.gov  
Michael Reed nycourts@mvbalaw.com  
Marc E. Richards mrichards@blankrome.com  
Michael P. Richman mrichman@pattonboggs.com  
Paul J. Ricotta pricotta@mintz.com  
David D. Ritter ecf@krcl.com, dritter@krcl.com  
Marianne Goldstein Robbins MGR@PREVIANT.COM,  
MGR@PREVIANT.COM;EM@PREVIANT.COM  
Courtney Rogers crogers@orrick.com  
Adam L. Rosen filings@spallp.com, arosen@silvermanacampora.com  
Sanford Philip Rosen rpc@rosenpc.com, srosen@rosenpc.com  
Andrew Neil Rosenberg mtattnall@paulweiss.com  
Robert J. Rosenberg adam.goldberg@lw.com  
David A. Rosenzweig DRosenzweig@Fulbright.com  
Douglas B. Rosner drosner@goulstonstorrs.com  
Robert R. Ross rross@fedex.com  
Scott K. Rutsky srutsky@proskauer.com  
Chester B. Salomon csalomon@beckerglynn.com,  
aranade@beckerglynn.com;jholdridge@beckerglynn.com  
Diane W. Sanders austin.bankruptcy@publicans.com  
Thomas P. Sarb ecfsarbt@millerjohnson.com  
Thomas J. Schank tomschank@hunterschank.com, mcraig@hunterschank.com  
Kenneth M. Schneider smpcecf@gmail.com  
Matthew L. Schwartz matthew.schwartz@usdoj.gov  
Kenneth J. Schweiker kschweiker@brownconnery.com  
Stephen B. Selbst sselbst@herrick.com, courtnotices@herrick.com  
Jacob B. Sellers jacob.sellers@leonard.com  
Joseph R. Sgroi jsgrai@honigman.com  
Brian L. Shaw bshaw100@shawgussis.com  
Andrea Sheehan sheehan@txschoollaw.com,  
coston@txschoollaw.com;asheel@yahoo.com;garza@txschoollaw.com  
Tricia A. Sherick tsherick@honigman.com  
Joseph E. Shickich jshickich@riddellwilliams.com  
Matthew J. Shier mshier@pinnaclelawgroup.com, mterry@pinnaclelawgroup.com  
Robert Sidorsky sidorsky@butzel.com  
Christina C. Skubic bankruptcy@braytonlaw.com  
Edward Smith easmith@venable.com  
Robert T. Smith rsmith@cniinc.cc  
Richard G. Smolev rsmolev@kayescholer.com,  
rrotman@kayescholer.com;maosbny@kayescholer.com;rcappiello@kayescholer.com  
Joseph H. Smolinsky Joseph.Smolinsky@weil.com  
Fredric Sosnick  
karen.park@shearman.com,randy.martin@shearman.com,jennifer.lin@shearman.com,kerri.silver@shearman.com  
Arthur J. Spector aspector@bergersingerman.com,  
jdiaz@bergersingerman.com;byglesia@bergersingerman.com;efile@bergersingerman.com  
Jeffrey S. Stein Jeff\_Stein@gardencitygroup.com,  
Kenneth\_Freda@gardencitygroup.com;jennifer.keough@gardencitygroup.com  
Leslie Stein lstein@seyburn.com, seccles@seyburn.com

Fred Stevens fsteven@foxrothschild.com  
Jason V. Stitt jstitt@kmklaw.com  
Harvey A. Strickon harveystrickon@paulhastings.com  
James M. Sullivan sullivan.james@arentfox.com, constantino.nova@arentfox.com  
Michelle T. Sutter msutter@ag.state.oh.us  
Marc N. Swanson swansonm@millercanfield.com  
Matthew A. Swanson matthew.swanson@leonard.com  
Colleen M. Sweeney csweeney@dickinsonwright.com  
Stanley B. Tarr tarr@blankrome.com  
Gordon J. Toering gtoering@wnj.com  
Jason M. Torf jtorf@schiffhardin.com, egeekie@schiffhardin.com  
Patrick J. Trostle ptrostle@jenner.com  
Raymond J. Urbanik rurbanik@munsch.com  
Shmuel Vasser shmuel.vasser@dechert.com  
Wendy S. Walker wwalker@morganlewis.com  
G. Alan Wallace gwall@fraserlawfirm.com  
Kimberly A. Walsh bk-kwalsh@oag.state.tx.us  
Sean M. Walsh swalsh@gmhlaw.com, jmahar@gmhlaw.com  
Robert B. Weiss rweiss@honigman.com  
Elizabeth Weller dallas.bankruptcy@publicans.com  
Michael R. Wernette mwernette@schaferandweiner.com  
David B. Wheeler davidwheeler@mvalaw.com  
Blanka K. Wolfe bwolfe@sheppardmullin.com  
Robert D. Wolford ecfwolfordr@millerjohnson.com  
Scott A. Wolfson wolfson@bsplaw.com,  
recchia@bsplaw.com;stepp@bsplaw.com;ojala@bsplaw.com;bolton@bsplaw.com;kochis@bsplaw.com  
Cynthia Woodruff-Neer cwoodruff-neer@alpine-usa.com  
Doron Yitzchaki dyitzchaki@dickinsonwright.com  
Terry L. Zabel ecf-tlz@rhoadesmckee.com

**U.S. Mail**

General Motors Corporation  
Cadillac Building  
30009 Van Dyke Avenue  
Warren, MI 480990-9025  
Attn: Warren Command Center, Mailcode 480-206-114

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10153  
Attn: Harvey Miller, Esq.,  
Stephen Kaotkin, Esq.,  
Joseph Smolinsky, Esq.

U.S. Treasury  
1500 Pennsylvania Avenue NW  
Room 2312  
Washington, D.C. 20220  
Attn: Matthew Feldman, Esq.

Cadwalader, Wickersham & Taft LLP  
One World Financial Center  
New York, New York 10281  
Attn: John J. Rapisardi, Esq.

Kramer Levin Naftalis & Frankel LLP  
1177 Avenue of the Americas  
New York, NY 10036  
Attn: Gordon Z. Novod

Vedder Price, P.C.  
Export Development Canada  
1633 Broadway, 47th Floor  
New York, New York 10019  
Attn: Michael J. Edelman, Esq.,  
Michael L. Schein, Esq.

The Office of the United States Trustee  
for the Southern District of New York  
33 Whitehall Street  
21st Floor  
New York, NY 10004  
Attn: Diana G. Adams, Esq.

Aspen Marketing Services, Inc.  
c/o Winston & Strawn LLP  
200 Park Avenue  
New York, NY 10166

Peter Backus  
15609 Allnutt Lane  
Burtonsville, MD 20866

John A. Bicks  
Sonnenschein Nath & Rosenthal LLP  
1221 Avenue of the Americas  
New York, NY 10020

Robert H. Brownlee  
Thompson Coburn LLP  
One U.S. Bank Plaza  
Suite 2600  
St. Louis, MO 63101



Todd A. Burgess  
Greenberg Traurig LLP  
2375 East Camelback Road  
Suite 700  
Phoenix, AZ 85016

William H. Chambers  
501 Cumberland Rd  
Tyler, TX 75703

Christopher Combest  
Quarles & Brady  
500 W. Madison Street  
Suite 3700  
Chicago, IL 60661

DW Griffith Inc  
100 Phila Pike  
Suite B  
Wilmington, DE 19809

Deutsche Bank AG  
c/o Bingham McCutchen LLP  
399 Park Avenue  
New York, NY 10022

Robert H. Garretson  
Palmieri Tyler Wiener Wilhelm & Waldron  
2603 Main St.  
Suite 1300  
Irvine, CA 92603

Christopher J. Giaimo  
Arent Fox LLP  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036-5339

Adrienne Goldner  
2847 Lexington Lane  
Highland Park, IL 60035

Howard Goldner  
2847 Lexington Lane  
Highland Park, IL 60035

Joseph P. Gromacki  
Jenner & Block LLP  
330 N. Wabash Ave.  
Chicago, IL 60611

Stephen H. Gross  
Hodgson Russ LLP  
60 East 42nd Street, 37th Floor  
New York, NY 10165

Adam Craig Harris  
Schulte Roth & Zabel, LLP  
919 Third Avenue  
New York, NY 10022

Marshall Scott Huebner  
Davis Polk & Wardwell  
450 Lexington Avenue  
New York, NY 10017

Alan W. Kornberg  
Paul, Weiss, Rifkind, Wharton  
& Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019

LG Electronics USA, Inc.  
c/o Winston & Strawn  
200 Park Avenue  
New York, NY 10166

Bruce Linhart  
89 Beatrice Ave  
West Islip, NY 11795

Neal S. Mann  
New York State Attorney General's O  
120 Broadway  
24th Floor  
New York, NY 10271

Brian Shoichi Masumoto  
Office of the United States Trustee  
33 Whitehall Street  
21st Floor  
New York, NY 10004

Maxxis International USA  
545 Old Peachtree Road  
Suwanee, GA 30024-2944

Doris McGill  
3733 Camry Ct  
Sebring, FL 33872-1443

Gerald L. Mills  
Kroncke, D'arcangelo, Sutter & Furey  
Aquarius West Building  
2255 West Laskey Road  
P.O. Box 5760  
Toledo, OH 43613-5760

Steven R. Montgomery  
Rawle & Henderson, LLP  
14 Wall Street  
27th Floor  
New York, NY 10005

H. Christopher Mott  
Gordon & Mott, P.C.  
4695 N. Mesa Street  
El Paso, TX 79912

Joseph O'Neil  
Smith Reed LLP  
1201 N. Market Street  
Suite 1500  
Wilmington, DE 19801

Christian M. Oelke  
Scarborough McNeese O'Brien Kilkenny, PC  
5410 SW Macadam Ave.  
Suite # 100  
Portland, OR 97239-3824

Don V. Ploeger  
P.O. Box 96  
Austin, TX 78767-0096

Raufoss Automotive Components Canada  
Porzio Bromberg & Newman PC  
100 Southgate Parkway  
Morristown, NJ 07962

J. Casey Roy  
Texas Attorney General Office  
Bankruptcy & Collections Division  
P.O. Box 12548, MC-008  
Austin, TX 78711-2548

SAS Institute Inc.  
100 SAS Campus Drive  
Cary, NC 27513

Yoshihiro Saito  
2000 M Street  
N.W. 7th Floor  
Washington, DC 20036

Saturn of Hempstead, Inc.  
c/o Robinson Brog et. al  
1345 Avenue of the Americas  
31st floor  
New York, NY 10105

Eric A Schaffer  
Reed Smith LLP  
435 Sixth Avenue  
Pittsburgh, PA 15219

Stephen J. Shimshak  
Paul, Weiss, Rifkind, Wharton  
& Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019

Stanley D. Smith  
608 North 13th St  
Middletown, IN 47356

Leo St. Amour  
1874 Burning Bush  
Rochester Hills, MI 48309

Standard Electric Company  
Corporate Office  
2650 Trautner Drive  
P.O. Box 5289  
Saginaw, MI 48603-0289

Matthew A. Swanson  
Leonard Street and Deinard  
150 South Fifth Street, Suite 2300  
Minneapolis, MN 55402

Timco, LLC  
2000 Town Center  
Suite 2100  
Southfield, MI 48075

Paul Traub  
Epstein Becker & Green, P.C.  
250 Park Avenue  
11th Floor  
New York, NY 10177-1211

Andrew D. Velez-Rivera  
Office of the U.S. Trustee  
33 Whitehall Street  
21st. Floor  
New York, NY 10004

Annie Wells  
Morgan Lewis & Bockius LLP  
101 Park Avenue  
New York, NY 10178

Thomas M. Wilson  
Kelley & Ferraro, LLP  
1300 E. Ninth Street  
Suite 1901  
Cleveland, OH 44114

Aaron L. Hammer, Esq. (*admitted pro hac vice*)  
Thomas R. Fawkes, Esq. (*admitted pro hac vice*)  
FREEBORN & PETERS LLP  
311 South Wacker Drive, Suite 3000  
Chicago, Illinois 60606-6677  
Telephone: 312.360.6000  
Facsimile: 312.360.6995  
ahammer@freebornpeters.com  
tfawkes@freebornpeters.com

*Attorneys for Trico Products Corporation*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:

Chapter 11

GENERAL MOTORS CORP, et al.,

Case No.: 09-50026

Debtors.

(*Jointly Administered*)

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**OBJECTION OF TRICO PRODUCTS CORPORATION TO NOTICE OF  
(I) DEBTORS' INTENT TO ASSUME AND ASSIGN CERTAIN EXECUTORY  
CONTRACTS, UNEXPIRED LEASES OF PERSONAL PROPERTY, AND  
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY  
AND (II) CURE COSTS RELATED THERETO**

Trico Products Corporation ("*Trico*"), creditor and party-in-interest in the above-captioned bankruptcy cases of General Motors Corp. and its affiliated debtors (collectively, the "*Debtors*"), by and through its undersigned counsel, hereby submits its objection (the "*Objection*") to the cure amount and statement of cure claim set forth in the *Notice of (I) Debtors' Intent To Assume and Assign Certain Executory Contracts, Unexpired Leases of Personal Property, and Unexpired Leases of Nonresidential Real Property and (II) Cure Costs Related Thereto* (the "*Cure Notice*"). In support of its Objection, Trico states as follows:

## **BACKGROUND**

### **A. Trico's Relationship With the Debtors**

1. Trico is a manufacturer of wiper blades and wiper systems, supplying its products to both OEM and aftermarket customers. In the period leading up to the Debtors' chapter 11 filings, Trico supplied wiper blades and wiper systems to the Debtors for installation in several models of new GM vehicles – and indeed, is the sole supplier of wiper blades and systems with respect to those models.

2. Trico supplies products to the Debtors pursuant to numerous purchase orders (collectively, the “*Purchase Orders*”),<sup>1</sup> as well as terms and conditions which apply to each of the Purchase Orders.

### **B. The Cure Notice**

3. On June 5, 2009, the Debtors served the Cure Notice pursuant to the *Order Pursuant to 11 U.S.C. §§ 105, 363, and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006 (I) Approving Procedures for Sale of Debtors' Assets Pursuant to Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC, a U.S. Treasury-Sponsored Purchaser; (II) Scheduling Bid Deadline and Sale Hearing Date; (III) Establishing Assumption and Assignment Procedures; and (IV) Fixing Notice Procedures and Approving Form of Notice* (Docket No. 274), approving, among other things, procedures establishing a process for the: (a) assumption of certain supplier agreements by the Debtors (as defined in the Cure Notice, the “*Assumable Executory Contracts*”) and assignment of these agreements to the proposed purchaser of substantially all of the Debtors' assets, Vehicle Acquisition Holding LLC, a

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<sup>1</sup> Because the Purchase Orders are voluminous, they have not been attached to this Objection. However, Trico will provide the Debtors or any other party-in-interest with copies of the Purchase Orders promptly upon request.

purchaser sponsored by the U.S. Treasury (the “*Purchaser*”); (b) determination of the amounts necessary to cure defaults under the Assumable Executory Contracts (as defined in the Cure Notice, the “*Cure Amounts*”); and (c) resolution of other disputes in connection with the assumption and assignment of the Assumable Executory Contracts.

4. The Cure Notice directed Trico to a website maintained by the Debtors (the “*Contract Website*”) identifying certain production supplier agreements that the Debtors have identified as Assumable Executory Contracts that they intend to assume and assign to the Purchaser, as well as the proposed “Cure Amount” associated with each Assumable Executory Contract.

5. On the Contract Website, the Debtors have scheduled their production supplier agreements with Trico among those intended to be assumed and assigned to the Purchaser, and have determined that the “Cure Amount” needed to cure all pre-Petition Date defaults thereunder is \$356,832.29.

#### **OBJECTIONS TO CURE NOTICE**

6. Section 365(b)(1)(A) of the Bankruptcy Code requires that “[i]f there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee cures, or provides adequate assurance that the trustee will promptly cure, such default.” 11 U.S.C. § 365(b)(1)(A).

7. Trico understands that the Debtors are continuously updating the Cure Amounts posted on the Contract Website. In fact, the Cure Amounts listed on the Contract Website are even changing today, the deadline for Trico to file its Objection. Because the Cure Amounts on the Contract Website remain in a state of flux, Trico has thus far been unable to fully reconcile



the Debtors' Cure Amounts to its own records. Trico therefore reserves its rights to supplement this objection once it is fully able to reconcile the Debtors' Cure Amounts to its own records. Additionally, Trico reserves all rights to file additional objections or other pleadings as necessary in response to future revisions to the Contract Website as it pertains to the Purchase Orders or the Cure Amounts.

8. Notwithstanding the protective objection set forth above, based on the Cure Amounts set forth on the Contract Website as it stands today, Trico has been able to identify several discrepancies and submits that as of the date the Debtors' commenced their chapter 11 cases (the "*Petition Date*"), the Debtors are indebted to Trico on account of pre-Petition Date obligations under the Purchase Orders in an amount not less than \$502,211.51 (the "*Actual Cure*"). Pending resolution of the below disputes, the Debtors should not be authorized to assume or assign any of the Purchase Orders to the Purchaser (or any other purchaser determined to be the prevailing bidder for the Debtors' assets at auction).

- Trico shipped approximately \$63,366.86 worth of product to the Debtors in the week prior to the Petition Date (the "*Prior Shipments*").<sup>2</sup> Based on Trico's attempted reconciliation of the Cure Amount with its books and records, it appears that the invoices evidencing the Prior Shipments were not included in the Debtors' calculation of the Cure Amount. Accordingly, Trico seeks confirmation from the Debtors: (1) that the Prior Shipments are not included in the Cure Amount; and (2) that the invoices evidencing the Prior Shipments constitute post-Petition Date obligations of the Debtors' estates that will be satisfied in full either

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<sup>2</sup> Trico has not attached the invoices forming the basis for the Actual Cure, as (1) they are voluminous; and (2) they should be in the possession of the Debtors. However, upon the reasonable request of a party-in-interest, Trico will provide copies of the invoices.

(a) in the ordinary course of business (and will be accorded administrative expense priority); or (b) are eligible to be paid to Trico as its designation as an Essential Vendor (as defined in the *Interim Order Pursuant to 11 U.S.C. §§ 105, 363, and 364 Authorizing Debtors To (I) Pay Prepetition Claims of Certain Essential Suppliers, Vendors, and Service Providers, (II) Continue Troubled Supplier Assistance Program, and (III) Continue Participation in the United States Treasury Auto Supplier Support Program*). Until the Debtors provide such confirmation, Trico has included the Prior Shipments in the calculation of the Actual Cure.

- The Contract Website listed most, but not all of the Purchase Orders. Trico believes that the Debtors inadvertently excluded Purchase Orders 000119450, SC03303569 and 000122785 (the “*Excluded Contracts*”). Trico requests confirmation from the Debtors that the Debtors intend to assume and assign the Excluded Contracts to the Purchaser and that they are Assumable Executory Contracts. To the extent that the Debtors do not intend to assume and assign the Excluded Contracts, Trico objects to such designation and the Court should deem the Excluded Contracts to be Assumable Executory Contracts.
- The Contract Website listed two Purchase Orders that are not active and that have been replaced by new Purchase Orders prior to the Petition Date. Therefore, Purchase Orders 07DD004X and 07DD004Z should be replaced by Purchase Orders OMP5001P and OMP5001V, respectively.
- Trico asserts Pre-Petition Date pricing disputes with the Debtors in the aggregate amount of \$51,590.87 (the “*Disputed Charges*”) with respect to the following:

- \$6,154.78 with respect to unapproved chargebacks.
- \$2,060.43 with respect to freight disputes.
- \$8,019.16 with respect to the Debtors' failure to pay the correct prices as listed in Trico's invoices.
- \$35,356.50 with respect to a pricing issue with respect to the Debtors' Saturn Division with Service – Part Number B91625-440. The Purchase Order between the parties provides that the price per unit is \$48.58. However, prior to the Petition Date, an apparent accounting error made by the Debtors led to the Debtors paying Trico only \$8.755 per unit – a difference of almost \$40.00 per unit from the agreed-upon price. The Debtors purchased 900 units of this part based on this incorrect pricing. Therefore, a default in the amount of \$35,356.50 exists which must be cured in order for this Purchase Order to be assumed.
- \$6,800.00 with respect to a pre-Petition Date invoice issued with respect to tooling provided to the Debtors (the "*Tooling Charges*").
- Unpaid pre-Petition Date invoices for product shipped to the Debtors pursuant to the Purchase Orders, in an amount not less than \$23,621.49.<sup>3</sup>

9. As to each of the above disputed amounts, Trico will provide further details, as well as copies of relevant documents, to the Debtors upon request.

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<sup>3</sup> Additionally, Trico and the Debtors are parties to several agreements and purchase orders concerning the Hummer H2 platform. In previous correspondence, Trico has requested that, among other things, the Debtors make a lump sum payment to Trico for obsolescence recovery in the amount of \$175,699 under the Hummer H2 Purchase Orders. The parties are engaged in discussions regarding outstanding Hummer H2 issues. While at this time, Trico does not believe that the requested obsolescence recovery payment constitutes a pre-petition default of the Debtors, Trico reserves all rights to assert an objection to the assumption of the Hummer H2 Purchase Orders if such payment is later determined to be a pre-petition default.

10. Until the Cure Amount is revised to match the Actual Cure, or until the parties reach agreement as to the Debtors' cure obligations to Trico, Trico objects to the assumption and assignment to the Purchaser (or any other purchaser of the Debtors' assets) of any of the Purchase Orders.

### **CONCLUSION**

For the foregoing reasons, Trico objects to the Cure Notice, and requests: (1) allowance of the Cure Amount needed to cure all pre-Petition Date defaults under the Purchase Orders in the aggregate amount of \$502,211.51; (2) clarification or confirmation concerning the issues set forth in this Objection; and (3) such other and further relief that may be just and proper.

Dated: June 15, 2009

**TRICO PRODUCTS CORPORATION**

By: /s/ Thomas R. Fawkes  
One of Its Attorneys

Aaron L. Hammer, Esq.  
Thomas R. Fawkes, Esq.  
FREEBORN & PETERS LLP  
311 South Wacker Drive, Suite 3000  
Chicago, Illinois 60606  
Telephone: 312.360.6000  
Facsimile: 312.360.6571